Supreme Court, U.S.
FILED
DEC 8 - 2004
OFFICE OF THE CLERK

(18)

No. 03-1693

IN THE

Supreme Court of the United States

McCREARY COUNTY, KENTUCKY, *et al.*,

Petitioners,

v.

AMERICAN CIVIL LIBERTIES UNION OF KENTUCKY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF AMICI CURIAE FAITH AND ACTION, INSTITUTE IN BASIC LIFE PRINCIPLES, INTERNATIONAL REAPERS FOUNDATION, THE NATIONAL CLERGY COUNCIL, AND A COMMITTEE OF CONCERNED CITIZENS IN SUPPORT OF PETITIONERS

BERNARD P. REESE JR.
REESE AND REESE
979 N. Main Street
Rockford, Illinois 61103
(815) 968-8851

Attorneys for Amici Curiae

191375

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Interest of Amici Curiae in this Case	1
Introduction	2
A coherent law is required to do equity and justice, or, the establishment clause needs new light ...	4
Development of the modern-day litigious establishment clause	5
The Declaration is part of our Constitution	9
The meaning and function of the Declaration	12
Attempted neutrality on God results in a religion of secular humanism	17
The strategy of the development of an antagonism to the Declaration of Independence	20
Conclusion and suggested solution	24

TABLE OF CITED AUTHORITIES

Cases:	Page
Abington v. Schempp, 374 U.S. 203 (1963)	8
Allegheny v. ACLU, 492 U.S. 573 (1989)	5, 8
Books v. City of Elkhart, 235 F.3d 292 (2000)	20
Edwards v. Aguillard, 482 U.S. 578 (1987)	19
Elk Grove v. Newdow, on cert. No. 02-1624	18
Elrod v. Burns, 427 U.S. 347 (1976)	8
Engle v. Vitale 370 U.S. 421 (1962)	8, 17
Everson v. Board of Education, 330 U.S. 1 (1947)	5, 6, 7
Lemon v. Kurtzman 403 U.S. 602 (1971)	8
Lynch v. Donnelly, 465 U.S. 668 (1984)	8, 9
McCollum v. Board of Education, 333 U.S. 203 (1947)	7
McGowan v. State of Maryland, 366 U.S. 420, 81 S. Ct. 1218 (1961)	10
Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000)	8

Cited Authorities

	Page
Seattle v. Dixon County School Board, 53 F.3d 152 (6th Cir. 1995), *cert. denied*, 64 L.W. 3478 (1995)	19
Torcaso v. Watkins, 367 U.S. 488 (October 1961)	17
Wallace v. Jafree, 472 U.S. 38 (1985)	4, 9
Other Authorities:	
America's Rule of Law by Robert C. Cannada; published, National Lawyers Association Foundation (2001)	11
Blackstone's *Commentaries on the Laws*	14
Darwin's *On the Origin of Species (1859)*	19
Evidence That Demands a Verdict by Josh McDowell, 1972, pgs. 17-79	16
How the Bible Made America, Newsweek, 12.27.82, p.42	16
Marx and Engles On religion, ED. Reinhold Neubauer (New York: Schocken is, 1964), 295	19
Nuremberg trial record	21
One Nation under God; part eight-*America at the Crossroads*, summary	16

Cited Authorities

	Page
Original Intent, Barton, WallBuilders, 2000 p.226) ..	16
State of Hawaii, Pub. L. No. 86-3, 73 Stat. 4 (1959)	9
The Works of That Learned and Judicious Divine, Mr. Richard Hooker, Vol. I pp. 148, 207, 230, 427	15
Two Treaties, Book II, p. 285, Chapter XI, § 135 ..	15

INTEREST OF AMICI CURIAE IN THIS CASE

Amici Faith and Action, Institute in Basic Life Principles, International Reapers Foundation, The National Clergy Council, and a Committee of Concerned Citizens, believe the Ten Commandments should be displayed in this case, and the upcoming Van Ordon case.[1]

This brief represents the voice of literally thousands of citizens disturbed by the moral breakdown occurring in our society. Placement of the Ten Commandments in public view in the schools, courthouses, or on public property will not in and of itself change the moral direction of this nation, but will evidence the voice of the Founding Fathers in the Declaration that this nation believes in God and His moral laws.

Amici contends the progressive withdrawal of God and his moral law from society through government action, particularly in our schools, has had an enormously detrimental effect on our culture, particularly our young people that represent the future of this nation.

---

1. This brief has been authored in its entirety by undersigned counsel for the amici curiae. No person or entity, other than the named amici and their counsel, made any monetary contribution to the preparation and submission of this brief. The parties have consented to the filing of this brief and their letters of consent have been submitted herewith.

INTRODUCTION

There is a grave sickness in this nation, the schism of society has begun, and there is severe social tension. The right to display the Ten Commandments is rooted in our Declaration of Independence, and is urgently needed as representing this nation's Faith in God and His moral law.

The Ten Commandments represent the ethics of Nathan of the Decalogue, who was not afraid to call David a murderer to his face, (II Sam. 12:1-15); Commandments that come not from man, but from God and denounce all kinds of greed, immorality, and social iniquity.

The admonition of our Declaration has been withheld from society and we sit now amidst the moral wreckage we are making of our nation. We sit in smug complacency for are we not the wealthiest and mightiest nation on this earth?

History discloses that the incurable sickness of the world is due, more than any economic cause, to the total corporate failure of man in the realm of righteousness. Man has not known God's moral law, or knowing it, has not obeyed. History both discloses and warns of the tragic consequences of disobeying God's moral law.

Our Founders believed, as is disclosed in the Declaration, that those objectives could be achieved only by the "protection of Divine Providence" and ". . . appealing to the Supreme Judge of the world for the rectitude of our intentions . . . we mutually pledge to each other our lives, our fortunes, and our sacred honor."

The Declaration does not contain, nor is intended to declare, how a personal relationship with God is established; that's up to each person's own religious convictions. Every person has the personal responsibility of determining his relationship with God and his eternal destiny. Many of the founders believed that "it was appointed onto man once to die, and after that the judgment." The only way eternal life could be attained was by confessing Jesus Christ as their Lord and Savior. Others believed differently. None of those religious convictions were written into the Declaration.

The Declaration of Independence, written in the blood and sacrifice of those who signed it,[2] was not a document to be debated in the court room, provided for no amendment, and appealed "to the Supreme Judge of the world for the rectitude [an old English word meaning moral uprightness] of our intentions." It was a statement of the Philosophy of Government of this nation as its governing "Rule of Law."

They were building a bridge for freedom across a deep chasm of conflict, based on God's moral law which was intended to secure those unalienable rights and freedom for themselves and the future of this nation.

It calls to mind a 19th century poem of an old traveler who toward evening, after having crossed a deep chasm, to the amazement of a fellow traveler standing near, started building a bridge.

"Old man," said a fellow Pilgrim standing near,
"You're wasting strength by building here;

---

2. Of the 56 signers, five were captured as traitors and tortured before they died. Nine others fought and died during the Revolutionary war. Many lost their health, wealth, homes, and often their families.

Your journey will end with the ending day,
You never again must pass this way.
You've crossed the chasm deep and wide,
Why build you the bridge at the even tide?"
The builder lifted his old grey head,
"Good friend in the path I've come," he said,
"There followed after me today
A youth whose feet must pass this way.
That chasm which has been naught to me,
To that fair haired youth a pitfall may be.
He too must cross in the twilight dim.
Good friend, I'm building the bridge for him."

There is a marvelous, courageous, and exciting young generation coming down the trail behind us. Many are fighting and dying right now for our freedom. Will we leave them the same "Bridge" of freedom, moral stability, and faith in God which was left to us, or are we in the process of destroying that "bridge."

A COHERENT LAW IS REQUIRED TO DO EQUITY AND JUSTICE, OR, THE ESTABLISHMENT CLAUSE NEEDS NEW LIGHT

In the modern-day establishment clause jurisprudence, there exists a troubling undertone of dissatisfaction. Although the court struggles to do justice, it understands a problem exists and is searching for the answer.

Justice O'Connor fretted with that problem in *Wallace v. Jafree*, 472 U.S. 38 (1985) when she observed:

> It is necessary to frame a principle grounded in the history and language of the First Amendment,

> and that we must strive to do more than erect a constitutional signpost (internal citation) to be followed in any particular case in which our predilections may dictate. Instead our goal should be to frame a *principle for constitutional adjudication* that is not only grounded in the history and language of the First Amendment but one that is also *capable of consistent application* to the relevant problems. (Emphasis supplied)

Justice Kennedy likewise reflected at his discontent in *Allegheny v. ACLU*, 492 US 573 (1989):

> Either the endorsement test must invalidate scores of traditional practices recognizing the place religion holds in our culture, or it must be twisted and stretched to avoid inconsistency with practices we know to have been permitted in the past, while condemning similar practices with no greater endorsement affect simply by reason of their lack of historical antecedent. (FN 10)Neither result is acceptable.

DEVELOPMENT OF THE MODERN-DAY LITIGIOUS ESTABLISHMENT CLAUSE

Once upon a time, this nation basked in the sunshine of a judicial system free of establishment clause litigation. After nearly 170 years of this balmy judicial weather, a dark cloud appeared on the horizon, *Everson v. Board of Education*, 330 U.S. 1 (1947). Nothing like this cloud had been seen before and not having any previous precedent to protect against its "obvious danger," documents of origin did not seem to provide a clear remedy for the problem, luckily they found a

letter[3] from Mr. Jefferson after considerable searching, with which they were able to "clarify" the original documents by writing into them a "wall of separation between church and state." The impenetrable "wall" was now ready to be used, although fortunately it did not seem to be necessary in the instant case. They of course could have no realization of the constant repair problems that were going to be encountered with reference to the "wall."

In dealing with this problem, the court evidently took no notice that during the previous 170 years, no one could find any history of a "cloud" like *Everson.* To the contrary, society seemed to be operating without any need for such a "wall." Public declaration of God and the Bible existed without restraint.

In 1782, Congress approved the printing of the Bible, the McGuffey reader filled with God and the Scripture inundated our school classrooms to the extent that President Lincoln proclaimed it was the "schoolmaster of the nation." There were sincere prayers by various Presidents, not simply ceremonial rhetoric; prayer and Bible study in the schools and colleges; proclamations by the government for fasting and prayers; "In God We Trust" on our coins, chaplains in the service; chaplains in the House and Senate without objection, etc.

This court's opinions and briefs are filled with recognition that prior to *Everson* this nation had the privilege of acknowledging God, prayer, and the Bible in our public

3. As Justice Rehnquist has subsequently observed, Jefferson was in France at the time the amendment was debated and adopted, and the letter written 14 years after the fact , has been distorted to accomplish the "result oriented" decision.

life without restriction. There was not a scintilla of evidence that society suffered any adverse affects.

Then suddenly, following on the heels of the *Everson* "storm threat," came *McCollum v. Board of Education*, 333 U.S. 203 (1947), in which, probably recognizing that the previous 170 years without problems must be a myth and apparently recognizing that something had gone awry in those years, determined that this country was in definite need of protection against publicly proclaiming God, particularly in the schools. Fearing disastrous consequences, a divided court struck down school prayer stating, "*. . . [T]oday it is the story of changing conceptions regarding the American democratic society.*" (*Emphasis added*).

Justice Jackson observed, however, that "We should place some bounds on the demands for interference with local schools. . . . in view of the number of litigations likely to be started as a result of this decision." (*Id.* at 232)[4] and as a result ". . . we are likely to make the legal 'wall of separation between church and state' as winding as the famous serpentine wall designed by Mr. Jefferson for the university he founded." (*Id.* 238) As a result, the infamous litigious "wall" years have been launched, with cases growing , as the dissent in McCreary below commented, in "imagination" and volume.

In the cases that followed, a clear lack of coherency developed. With rare exception, all the cases were split decisions; there was no unity on the bench.

4. As history has subsequently recorded, those were gross understatements.

Lemon v. Kurtzman, 403 U.S. 602 (1971) sought to provide a support in the "Lemon test" to the prophesied "meandering wall." The cases are littered with judicial explicitives concerning the incompetence of the employed Lemon guide, and where to find the location of the "wall." Disparate results frequently occurred, for example, *Allegheny v. ACLU*, 492 U.S. 573 (1989) where one Christmas display was found acceptable and the other unacceptable.

The cases over the years likewise developed certain confusing and subjective terminology: "[the] secular purpose" cannot be a "sham." *Santa Fe Independent school District v. Doe*, 530 U.S. 290, 308 (2000). *McCreary* below: "finding of irreparable injury is mandated." citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976) "peer pressure," *Abington v. Schempp*, 374 U.S. 203 (1963); "outsiders while the others are insiders," *Lynch v. Donnelly*, 465 U.S. 668 (1984); prayer compared to religious persecution in England and the incarceration of John Bunyan; *Engle v. Vitale*, 370 U.S. 421 (1962); "No person can be punished for entertaining or professing religious beliefs or for disbelief nor for church attendance or nonattendance"

The cases are filled with subjective descriptions: "direct or indirect coercion," "peer pressure," "outsider or insider," Even the far-reaching application of results in England of religious persecution using the illustration of when John Bunyan was put in jail for refusing to comply with certain religious requirements of the Church of England, and refusing to stop certain religious practices. Disagreement surfaced, even among its adherents, that the modern establishment clause doctrine was cumbersome and difficult to apply in these "troublesome areas."

In these "wall of separation" cases the dissents smolder with historical facts adverse to the majority holding and their interpretation of the establishment clause. In *Lynch v. Donnelly*, 465 U.S. 668 (1984), Justice Burger complains that the modern interpretation is inconsistent with the obvious definition recognized by Congress in 1789 when at the same time the Bill of Rights was sent to the state legislators for approval, Congress was providing for a chaplain in the House and Senate, a practice that has continued for over 200 years. In *Wallace v. Jafree*, 472 U.S. 382 (1985), Justice Rehnquist finds that the First Amendment had a *well accepted meaning* that *Congress would not establish a national religion* and that "neutrality" will not work.

So the case law is in shambles as far as a coherent establishment of an evidentiary foundation is concerned, and into that confusion is being poured the proliferation of cases exploited by the ACLU and its like who have no legitimate interest except to them its big business.[5]

THE DECLARATION IS PART OF OUR CONSTITUTION

"Why should not the Declaration control the outcome of establishment clause cases under the First Amendment?" Perhaps the reason is it would require rewriting the establishment clause.

The original States endorsed the Declaration and every State since has been required to provide a government that is ". . . republican in form and in conformity with the Constitution of the United States and the *principles of the Declaration of Independence* . . ." [*See* State of Hawaii, Pub. L. No. 86-3, 73 Stat. 4 (1959)] (Emphasis supplied)

5. See their extensive and expensive web site.

To become a territory of the United States, its government must comply with the Northwest Ordinance—adopted July 13, 1787 by the United States in Congress assembled—Article Third, providing "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." [6] [7]

Justice Douglas in *McGowan v. State of Maryland*, 366 U.S. 420, 81 S. Ct. 1218 (1961), captured that historical fact in these words:

> The institutions of our society are founded on the belief that there is an authority higher than the authority of the State; that there is a moral law which the State is powerless to alter; that the individual possesses rights, conferred by the Creator which government must respect. The Declaration stated the now familiar theme: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.' *And the body of the Constitution as well as the Bill of Rights enshrined those principles*. (Emphasis added)

---

6. It is specifically to be noted that this was adopted the same week that Congress was completing the draft of the First Amendment. The ordinance was reenacted in 1789 at the time the Bill of Rights was sent to the states for approval.

7. *See Meyer v. United States*, 272 US 52, 174-75 (1926).

Former President John Quincy Adams at the Jubilee of the Constitution on April 30, 1839[8], the 50th anniversary of the inauguration of President Washington stated: [9]

> This act [the Constitution] was the compliment to the Declaration of Independence; founded upon the same principles, carrying them out into practical execution, and formulating with it, one entire system of government . . . the Declaration and Constitution are parts of one consistent whole, founded upon one and the same theory of government, then new, not as a theory, for it had been working itself into the mind of man for many ages, and been especially expounded in the writings of Locke, but had never been adopted by a great nation in practice.

November 19, 1863 , President Lincoln in his Gettysburg Address officially recognized the Declaration of Independence as the beginning of this nation. Its Philosophy of Government was the reason for the bloody civil war because the government of the United States, which had been formed to protect the rights declared in the Declaration, was standing by that obligation even to the point it was committing its citizens to battle and death.

---

8. This address of course was some 50 years or so after the adoption of the Bill of Rights.

9. *America's Rule of Law* by Robert C. Cannada; published, National Lawyers Association Foundation (2001).

THE MEANING AND FUNCTION OF THE DECLARATION

The Declaration establishes our Philosophy of Government, or Rule of Law, and is made up of words selected for their precise meaning.

The "laws of nature and of nature's God" state "truths" which are "self-evident" that all men are "created equal," and "endowed " by their Creator with certain "unalienable rights."

The third sentence in the second paragraph is of utmost importance because it emphasizes that the principles set forth in the Declaration are to be protected and implemented by the government instituted. The sentence provides:

> That whenever any *form of government becomes destructive of these ends*, it is the right of the people to alter or to abolish it and *institute* new government, *laying its foundation on such principles* and organizing its powers in such form as to them shall see most likely to affect their safety and happiness. (Emphasis added).

Breaking that sentence down into its component parts, we find that the Declaration states "One people" may establish a "new government " but must first proclaim a "foundation of principles" on which that government is to be organized; the Constitution provides for the protection of those foundational principles.

Our Declaration is actually the Preamble to the Preamble of the Constitution.[10] The Constitution is subordinate to the foundational principles in the Declaration.

The founder's formula is thus simple: Foundational principles are first established and then the Constitution of the government is for the protection of those principles and cannot be repugnant to the Declaration as the initial document of origin.

The founding fathers expressed in the Declaration in very strong and forceful language their concept of the legal relationship between the Declaration and the government to be formed. So strong was that feeling that of the 55 delegates to the "Constitutional convention," only 39 initially signed the Constitution.

It is thus imminently clear from the Declaration that the Constitution, including the First Amendment, cannot violate the Rule of Law contained in the Declaration by prohibiting the public expression of that philosophy.

The last sentence of the Declaration thus unequivocally invites public governmental expression of God and his moral law. In graphic support of that conclusion, it invokes the protection of Divine Providence, the Supreme Judge of the world. At the oral argument on the Pledge of Allegiance case involving the provision "under God," Justice Stevens asked an interesting question. "Do the words 'under God' have the same meaning today that they did then." I did not think he

---

10. The prominent constitutional scholar William Bentley Ball, shortly before his death in 1999, expressed the legal connection between the Declaration in the Constitution in that manner.

got a clear answer from either counsel, but the meaning that this nation recognizes a living God, as opposed to atheistic communism, is the same today as it was in 1954. Likewise the Declaration has the same meaning today as in 1776.

The precise meaning of the terms used had well-known meanings and resulted in a unified decision in spite of heated debates. The words clearly conveyed the reality of God as our Creator, their faith in Him and his moral laws as our foundation for government.

From Blackstone's *Commentaries on the Laws*:[11]

> Law, in its most general and comprehensive sense, signifies a rule of action; . . . Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the *laws of nature and of nations*. And it is that rule of action which is prescribed by some superior, in which the inferior is bound to obey. Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. This will of his maker is called the *Law of Nature*. . . . This Law of Nature, been coeval with mankind and dictated by God Himself, is its core superior in obligation to any other . . . these are the eternal, immutable laws of good and evil . . . the doctrines thus delivered we called the revealed

11. Introduced in 1766 was invoked as an authority in the writings of James Kent, James Wilson, Fisher Amos, Joseph Story, John Adams, Henry Lawrence, Thomas Jefferson, James Madison, James Otis, etc.

> or divine law, and are to be found only in the Holy Scriptures . . .

From Locke:[12]

> The Law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions must . . . be conformable to the *Law of Nature*, i.e. to the will of God.

Richard Hooker: The *Law of Nature* comes from the Scripture which is filled with the *Laws of Nature*.[13]

As the brilliant constitutional scholar William Bentley Ball expressed shortly before his death in 1999; "The Declaration is the Preamble to the Preamble of the Constitution." These two documents, the Declaration and the Constitution are really one document, our "Documents of Origin."

An exegesis of the Declaration reveals that the existence of "Nature's God," the "Creator," "Laws of Nature and of Nature's God," represent God's "Moral Laws" for humans which cannot be ignored by the government. These laws were universally and historically recognized as coming from the Bible which includes the Ten Commandments.

12. *Two Treaties*, Book II, p. 285, Chapter XI, § 135

13. *The Works of That Learned and Judicious Divine*, Mr. Richard Hooker, Vol. I pp. 148,207,230,427

The Bible is the most accurate piece of ancient literature that exists, and it was quoted by the founders more frequently than any other source.[14]

President Truman, when questioned concerning the reason for America's greatness following the World Wars, said:

> The fundamental basis of this nation's laws was given to Moses on the Mount. The fundamental basis of our Bill of Rights comes from the teachings we get from Exodus and St. Matthew, from Isaiah and St. Paul. I don't think we emphasize that enough these days. If we don't have a proper fundamental moral background, *we will finally end up with a totalitarian government which does not believe in rights for anybody except the State!* (Emphasis supplied).[15]

---

14. For prodigious research material, see *Evidence That Demands a Verdict* by Josh McDowell, 1972, pgs. 17-79.

> . . . [H]istorians are discovering that the Bible, perhaps even more than the Constitution, as our founding document.

Woodward and Gates, *How the Bible Made America*, Newsweek, 12.27.82, p.42 (see also *Original Intent*, Barton, WallBuilders, 2000 p.226)

15. http//www.zdraines.homestead.com/files/bookusa.htm (One Nation under God; part eight-*America at the Crossroads*, summary).

ATTEMPTED NEUTRALITY ON GOD RESULTS IN A RELIGION OF SECULAR HUMANISM

Consequences causing "irreparable harm" to those alleged to have been offended by God are described in terms such as "outsider or insider," "unaccepted," "embarrassed," and words of similar import. As for the activity assaulted, the defense has to show it wasn't "sham," "that the victim wasn't coerced or required to do something against their religious convictions," etc. *Engle v. Vitale*, 370 U.S. 421 (1962) even uses the veiled comparison of John Bunyan being put in jail for noncompliance and engaging in restricted religious activities.

The above represent the "evidence" of "irreparable harm" for being exposed to God or anything that represents Him without any evidence of actual financial loss or punishment being produced. As will be briefly described, the same cannot be said for those who are confronted with the requirement to bend the knee to Secular Humanism.

In *Torcaso v. Watkins*, 367 U.S. 488 (October 1961), the court found Secular Humanism to be a religion which does not teach the existence of the God of creation, and that man is his own god, and capable of creating his own moral laws.

The rulings of the Supreme Court have resulted in removing the recognition of God or any reference to him from our schools. Rather than preventing the "establishment of a religion," the modern establishment clause doctrine has actually created a religion of secular humanism. Every person in this country in a public place must now "bow the knee," particularly in school.

The court ignores the fact that those who are not permitted to pray or acknowledge God in his school, or in a public building, have the feeling of being an outsider and banished from society as the "religious right", or as some fanatic because they believe in God.

The court actually requires compliance by the individuals, particularly in schools, or else that individual could be punished, or possibly put in jail. A young father in Dixon, Illinois was handcuffed and dragged off to jail in addition to being humiliated, simply for praying on the public sidewalk before his son went into the school.[16]

Chief Justice Roy Moore refused to bow the knee to secular humanism. He stood on his convictions and his rights under the Alabama statutes. He was fired from his job as the elected Chief Justice of the Supreme Court and was threatened with being disbarred.

The consequences for failing to bow the knee to secular humanism are not simply subjective "feelings" but often involve harsh consequences, including going to jail. The ACLU is like the Gestapo haunting your trail.

Cases that reach this court on the deprivation of rights to express their religious beliefs under the free exercise clause of the First Amendment are infinitesimal compared to what is going on in the lower federal courts, state courts, governmental places, and particularly in the schools of our nation.[17]

---

16. I ended up representing him. I got the State's Attorney to dismiss the case. The father did not have money to pay.

17. See for example cases listed on page 22 of our Amici brief filed *Elk Grove v. Newdow,* on *cert.* No. 02-1624.

In one such case, a student wrote a paper on the life of Jesus Christ. She was given a zero by the teacher, even though other students were permitted to write about reincarnation, witchcraft, and the occult. *Seattle v. Dixon County School Board*, 53 F.3d 152 (6th Cir. 1995), *cert. denied*, 64 L.W. 3478 (1995). How must she have felt, plus being punished for failure to submit to the religion of secular humanism?

Edwards v. Aguillard, 482 U.S. 578, 579 (1987) without reference to the Declaration and in specific violation of its Rule of Law authorized the teaching of Darwin's philosophy of evolution, but denied the right to teach God as the Creator. Over the vigorous dissent of Justices Rehnquist and Scalia, the court found, "The act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind." Students were required to be taught a godless religion of humanism against their religious convictions or be punished.

Darwin's *On the Origin of Species (1859)* opines we are not created but evolve.[18] The bedfellow of this philosophy was Karl Marx who said "In our evolutionary concept of the universe, there is absolutely no room for either a Creator or a ruler."[19] Without a Creator, there are no unalienable rights, only man made rights. It is thus permitted to teach a godless philosophy in our schools that does not value life at the beginning or at the end, while denying the principles contained in our Declaration of Independence.

---

18. Macroevolution is the theory that holds that all varieties of life forms emanated from a single cell or "common ancestor," and that man mutated through random molecular biological changes and man as a mammal came through the ape family, the picture you most customarily see in a school book.

19. Marx and Engles On religion, ED. Reinhold Neubauer (New York: Schocken is, 1964), 295.

Justice Mannion observed in his dissent in *Books v. City of Elkhart* 235 F.3d 292 (2000) in which the court ordered the removal of Ten Commandments from the lawn of the city's Municipal Building:

> The Ten Commandments monument also serves as an historical headstone, not only for our nation's original foundation, but also for the 1950s, the religious time in America when as a nation we turned to God. The time when divorce, illegitimacy, drug abuse, murder, abortion, youth violence, and the other crises of today were still relatively rare.

Based upon the index of leading cultural indicators, 2001, for the period between 1960 and 1999 out of wedlock births are up 523%; out of wedlock teen births increased 430%; teenage suicides increased over 100%; the records are replete with drug use, pregnancies in grade school, pornographic literature, nudity on public television, an epidemic of AIDS and other sexually transmitted disease. Since 1960 we have developed a major moral problem in this nation particularly that is attacking our young people.

THE STRATEGY OF THE DEVELOPMENT OF AN ANTAGONISM TO THE DECLARATION OF INDEPENDENCE

There is a strategy to accomplish the goal of secular humanism, and remove God from a society and permit unbridled liberty and absolute individual autonomy. To accomplish this they must do away with the principles as established in the Declaration, which include the display of the Ten Commandments. If accomplished, man is free to create his own rights, and the citizen is subject to the tyranny of government.

The schools are the target to undermine convictions with claims of "greater knowledge, newer truths, and superior insight" so as to divide the past from the future. Under the steady "scholarly" attack, it was conjectured they could change the structure for belief in God so that He was no longer a plausible entity. This campaign has been carried out under the guise of political or religious freedom. The actual intent, however, is to vanquish anything that pertained to moral restraint.

An illustration of the kinds of totalitarian consequences that can result was the trial at Nuremberg. In his opening statement Associate Justice Robert Jackson, chief prosecutor for the United States, said: [20]

> The wrongs which we seek to condemn and have punished have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. . . . what makes this inquest significant is that these prisoners represent sinister influences that will work in the world long after their bodies have returned to dust. . . . they took from the German people all those dignities and freedoms *that we hold as our natural and unalienable rights in every human being*. . . . The Nazis directed such a campaign of arrogance, brutality, and annilation as the world has not witnessed since the pre-Christian ages. . . . Civilization can afford no compromise with the social forces which would gain renewed strength if

20. All of the recitations concerning the Nuremberg trial, Justice Jackson's opening and closing statement and excerpts from the evidence are taken verbatim from the Nuremberg trial record unless paraphrased from the record and that will be noted.

we deal generously or indecisively with the men in whom those forces now precariously survive.

(Emphasis added).

Justice Jackson presents parts of the evidence:

- ". . . . Religious persecution was cloaked in the language of religious liberty. . . ."
- "The Nazi party always was predominantly anti-Christian in its ideology. . . ."
- "The conspirators devised and carried out a systematic and relentless repression of all Christian sects and churches."
- ". . . . Educational institutions were suppressed or subjected to requirements of Nazi teaching inconsistent with the Christian faith."
- "Religious instruction was impeded and the exercise of religion made difficult."
- "Since the law was what the Nazis said it was, every form of opposition was routed out and every dissenting voice throttled."
- "International law, *natural law*, ... any law is always simply a propaganda device to be invoked when it would help and to be ignored when it would condemn what they wanted to do." (Emphasis supplied)

- "It was Rosenberg, the intellectual high priest of the 'master race,' who provided the doctrine of hatred which gave the impetus for the annihilation of Jewry, and put his infidel theories into practice. . . ."

Some transcribed testimony, and evidence from written documents read by Justice Jackson in his argument:

- "More and more of the people must be separated from the churches and their 'organs', the pastors. . . . never again must their influence on leadership of the people be yielded to the churches. This influence must be broken completely and finally."
- "The possibility of church influence must be totally removed. Not until this has happened, does the state leadership have influence on the individual citizens."
- ". . . . That conduct which is a crime in the moral sense must be regarded as innocent in law."
- ". . . . Christian teachings have stood in the way of a 'racial solution of the Jewish question in Europe.'"
- A Nazi document introduced into evidence asserted, "Of course, any such program must reckon with the opposition of the Christian Church. This was recognized from the beginning. [It was stated by the Nazi leaders] that 'national socialism and Christian concepts are irreconcilable', and the people must be separated from the churches and the influence of the churches totally removed."

- "We have to proceed brutally, the stronger is always right."

- "I think you can score many more successes when you want to lead someone if you don't tell them the truth than if you do tell them the truth."

The charge was "crimes against humanity." The Nazi counsel argued they were simply obeying the laws of their government, and any subsequent law was expo-facto. The response of Jackson was that there is a higher moral law of a Supreme Being which transcends human law with respect to personal moral accountability.

CONCLUSION AND SUGGESTED SOLUTION

With adequate citation of authority: (1) Declare the Declaration to contain this nation's philosophy of government; that it is part of our documents of origin and is consequently enshrined in our Constitution; (2) Redefine the "establishment clause" that it is subordinate to the provisions of the Declaration of Independence; (3) That under such redefinition, a display of the Ten Commandments is permitted and such other activities as are consistent with the philosophy of government contained in the Declaration of Independence; (4) Establish clear rules of evidence to be followed in the trial court which would determine on motion by the trial judge whether the plaintiff had standing to bring the action, taking into consideration who was financing the litigation, whether there was actual injury taking place, and permit depositions for that purpose; (5) That appropriate expression of the Philosophy of Government contained in the Declaration of Independence cannot be restrained otherwise it constitutes a violation of the "free exercise clause" of the First

Amendment. As such it is entitled to public expression; (6) Provide a clear definition of religion as opposed to a belief in God or his moral laws and predicate evidentiary instructions on that basis; (7) Establish instructions on who was responsible to carry the burden of proof, when that burden shifts, and the level of proof required whether it be by preponderance of the evidence, or beyond a reasonable doubt.

In accord with this new reevaluation of the establishment clause, the court below should be reversed. Ten Commandments should be displayed in both this case and the Van Ordon case.

Respectfully submitted,

BERNARD P. REESE JR.
REESE AND REESE
979 N. Main Street
Rockford, Illinois 61103
(815) 968-8851

Attorneys for Amici Curiae